



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HKcc-0800004
Complainant:	Cheung Kong (Holdings) Limited
Respondent :	Punhoi Yeu

1. The Parties and Contested Domain Name

The Complainant is Cheung Kong (Holdings) Limited, whose address is 7th Floor, Cheung Kong Centre, 2 Queen's Road Central, Hong Kong.

The Respondent is Punhoi Yeu, whose address is Room 302, No. 64, Lane 1415, Jiangnan Road, Putuo District, Shanghai, CN 200000, and whose email address is cedomain@pacific.net.hk.

The domain name at issue is <长江.cc>, which is registered with Web Commerce Communications Limited d/b/a Webnic.cc.

2. Procedural History

On 30 July 2008, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC), and elected that this case be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

Based on a Whois record search conducted on 25 July 2008, the Complainant had identified the Registrant as Punhoi Yeu, whose address is Room 302, No. 64, Lane 1415, Jiangnan Road, Putuo District, Shanghai, CN 200000; whose fax and phone number is +86 010 58022126; and whose email address is cedomain@pacific.net.hk. On 15 August 2008, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. Except as otherwise specified, all correspondence to and from the ADNDRC described herein was in the English language.

On 15 August 2008, the ADNDRC transmitted by email to the Registrar, Web Commerce Communications Limited d/b/a Webnic.cc., a request for registrar verification in connection with the Disputed Domain Name. On the same day, the Registrar transmitted by email to the ADNDRC its verification response, identifying Punhoi Yeu as the

registered holder of the subject domain and confirming the Respondent's contact particulars, as recited above.

On 6 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action, by email directed to cedomain@pacific.net.hk, requiring that a Response be submitted on or before 27 October 2008. The Respondent failed to submit a Response within the specified period of time. Accordingly, on 31 October 2008, the ADNDRC notified the Respondent's default.

On 15 December 2008, the Complainant submitted a Supplemental Complaint by email to the ADNDRC, with copy to the Respondent. On the following day, Respondent sent an email to the ADNDRC bearing the reference information to the instant case (without copy to the Complainant), the contents of which was a single word, "hello".

Thereafter, on 15 January 2009, the Complainant submitted a Further Supplemental Complaint by email to the ADNDRC, with copy to the Respondent. Once again, on the following day, Respondent sent an email to the ADNDRC bearing the reference information to the instant case (without copy to the Complainant), and again, the message comprised a single word, "hello".

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having first received a Declaration of Impartiality and Independence and a Statement of Acceptance, on 17 March 2009, the ADNDRC notified the parties by email that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with the Rules and the ADNDRC Supplemental Rules. The same day, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 31 March 2009.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current Disputed Domain Name Registration Agreement is English. Accordingly, the Panel determines English as the language of the proceedings.

Because the Complainant's Supplemental Complaint and Further Supplemental Complaint were not supplied in response to a request from the Panel, in accordance with the Rules and the ADNDRC Supplemental Rules, which contemplate no additional pleadings beyond a single Complaint and a single Response, the Panel has elected to exclude the Complainant's further papers from its consideration and has decided this matter on the merits of the Complaint and the accompanying exhibits only.

3. Factual background

The Complainant in this case is Cheung Kong (Holdings) Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including "长江",

“长江实业”, and “长江集团”, and their corresponding marks/names in English namely, “Cheung Kong”, “Cheung Kong Holdings” and “Cheung Kong Group”.

The Respondent, Punhoi Yeu, is the current Registrant of the Disputed Domain Name <长江.cc>, according to the Whois database information. The registered address of the Respondent is Room 302, No. 64, Lane 1415, Jiangnan Road, Putuo District, Shanghai, CN 200000; Respondent’s fax and phone number is +86 010 58022126; and the email address is cedomain@pacific.net.hk.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The Disputed Domain Name is identical or confusingly similar to trademarks or service marks to which the Complainant has rights

- I. The Complainant, Cheung Kong (Holdings) Limited (“长江实业(集团)有限公司”), formerly known as Cheung Kong Real Estate Company Limited / Cheung Kong Real Estate & Investment Company Limited (长江地產有限公司), is the flagship of the Cheung Kong Group (“长江集团”), the leading Hong Kong based multinational conglomerate.
- II. The Complainant, was established on 8 June 1971 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008 and since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings”/“长江实业”. The Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Complainant’s group of companies, which is known as the Cheung Kong Group (“长江集团”), include the Complainant (stock code: 0001), Hutchison Whampoa Limited (stock code: 0013), Cheung Kong Infrastructure Holdings Limited (stock code: 1038) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index; Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715) and TOM Group Limited (stock code: 2383), which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int’l., (Holdings) Inc. (stock code: 8222), a company listed on the Growth Enterprise Market. Based in Hong Kong, businesses of the Cheung Kong Group (“长江集团”) encompass such diverse areas as property development and investment, real estate agency; estate management; ports and related services; telecommunications; hotels; retail; energy; infrastructure; finance; e-commerce; building materials; multimedia and life science. The combined market capitalization of the Cheung Kong Group’s Hong Kong listed companies amounted to HK\$817 billion as at 30 June, 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide.
- III. Founder of the Complainant and the Cheung Kong Group (“长江集团”), Mr. Li is a strong believer in synergy – the power of combined efforts. This belief is reflected in his naming the Complainant and a series of companies within the Cheung Kong

Group (“长江集团”) after the Yangtze River (扬子江 or 长江) that flows through China, a great river that aggregates countless streams and tributaries. As a result, there are a large number of companies within the Cheung Kong Group incorporated with names beginning with the Chinese characters/words “长江”/”Cheung Kong”.

- IV. The Complainant is mainly a property development and strategic investment company and it is one of the largest developers in Hong Kong of residential, commercial and industrial properties. About one in seven private residences in Hong Kong were developed by the Complainant.
- V. The Complainant has always aimed to maintain a strong presence in overseas property markets as a quality property developer of choice residential and commercial projects. For example, in China, the Complainant has invested in a lot of important real estate development projects including being the largest shareholder of the project “Oriental Plaza”, the most prestigious project in the middle of downtown Beijing with project value of HKD7,000 million and covering a total gross floor area of 920,000 meter square. In addition, the Complainant has in 1994 purchased “Lido Place” in Beijing, a commercial/residential complex that accommodates a large number of Beijing's expatriate community and multinational companies.
- VI. Pursuant to the enormous effort put by the Complainant in its businesses and excellent quality of the Complainant’s real estate development and services in Hong Kong and China, the Complainant has obtained the following awards: -

Hong Kong

<u>Awards</u>	<u>Organizer</u>	<u>Nature</u>
1998-99 REVIEW 200: Asia’s Leading Companies Award – ranked No.3 of “Top 10 Hong Kong Companies doing Business in Asia”	Far Eastern Economic Review	Organizer invited subscribers to choose the leading companies from 525 Asia and International companies.
1999 World Most Recommended Real Estate Development Company	PricewaterhouseCoopers	Organizer conducted survey on 754 CEO from state-owned enterprise, large-scale incorporations, self-owned companies and listed companies of 715 countries to elect the world most recommended enterprises in different sectors.

China

<u>Awards</u>	<u>Organizer</u>	<u>Nature</u>
1998 Asia’s Best Managed	Asiamoney	Organizer invited 250 fund

Companies Award
(Mainland & Hong Kong)

managers from 150
institutional investors
worldwide to nominate the
best managed companies.

2001 China Best Quality Capital
Services and Brands: the
Best Real Estate
Developer

Organizer aimed to praise
companies which were
rapidly expanding the
China market and which
have contributed a lot to
mainland economy.

VII. “长江” is not only the service mark/trade name adopted by many companies within the Cheung Kong Group (“长江集团”) of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”.

VIII. Based on the above, the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” have been well-recognized by the public and trade to be distinctive of and identified with the Complainant and the Cheung Kong Group, but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. One can also find countless publications and reports on the Internet about the Complainant and Cheung Kong Group by reference to the service marks/trade names “长江实业”, “长江集团” and “长江”.

IX. Further, as early as 13 December 1995, the Complainant has already registered the domain name “cheungkong.com”. On 1 February 2000, the Complainant further registered the domain name “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

X. The major part of the Disputed Domain Name “长江” is :-

(m) identical to the major portion of the service marks/trade names of the Complainant and its group of companies;

(n) the Chinese translation of the major part of “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”; and

(o) the Chinese translation of the major portion of the Complainant domain names “cheungkong.com” “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

XI. The Respondent is not in any way related to the Complainant, nor was the Respondent authorised by the Complainant to use the mark/name “长江”.

XII. On or before the registration date of the Disputed Domain Name i.e. 21 March 2006:-

(m) The Complainant and the Cheung Kong Group have widely used “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” as service marks/trade names;

(n) Substantial goodwill and reputation subsisted in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English”;

(o) The service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English have been identified by the public as the service marks/trade names of the Complainant and the Cheung Kong Group and none other; and

(p) The Complainant has registered the domain names “cheungkong.com”, “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

XIII. As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Disputed Domain Name has been registered and is being used in bad faith

XIV. Service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” have been used by the Complainant and the Cheung Kong Group in Hong Kong and China respectively for more than 30 and 10 years before the registration date of the Disputed Domain Name. All these service marks/trade names have very strong reputation in Hong Kong and China. Undoubtedly, the Complainant and the Cheung Kong Group have prior rights in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the most distinctive portion of the service marks/trade names and/or which is a Chinese translation of the most distinctive portion of the English service marks/trade names of the Complainant and the Cheung Kong Group taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’s act in registering the Disputed Domain Name authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in 2006.

XV. The Complainant is also aware that apart from the Disputed Domain Name, the Respondent has also registered the domain name “cheungkongholdings.cc”. The bad faith of the Respondent is obvious.

XVI. Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into use. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant.

B. Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

5. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The evidence submitted by the Complainant shows that “长江” is not only the service mark/trade name adopted by many companies within the Cheung Kong Group (“长江集团”), of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”.

Since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings”/“长江实业” and there is a large number of companies within the Cheung Kong Group incorporated with names beginning with the Chinese characters/words “长江”/“Cheung Kong”. As the suffix “.cc” only indicates that the domain name is registered under this ccTLD, pertaining to the Cocos Islands, and is not distinctive, the Panel finds that the Disputed Domain Name <长江.cc> is identical to the Complainant’s service marks/trade names.

It is noted that that the Disputed Domain Name appears in simplified Chinese characters and that the Complainant and the Cheung Kong Group have widely used ‘

长江实业’, ‘长江集团’ and ‘长江’, also in simplified Chinese characters, since before the date of registration of the Disputed Domain Name on 21 March 2006.

The Panel holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has defaulted in these proceedings and has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name – the two Chinese characters of which refer to China’s greatest river, the Yangtze River (扬子江), or Changjiang River (长江).

Cheung Kong (Holdings) Limited v. Tiza Dustin Hill, ADNDRC case number HK-0800174 (17 November, 2008), concerned the same Complainant’s claims in relation to the materially identical domain name “长江.net”. The administrative decision in that case recites:

Without any other specific reference or connotation, “长江” means nothing but the name of the [Yangtze or Changjiang] River. Although Complainant has established the common law right in the mark “长江”, it cannot and should not deprive others from using the River’s name normally. The right that the Complainant can assert in the mark “长江” is linked to its businesses and services as to which the mark is used. The Complainant is, by no means, entitled to claim any monopoly over the River name “长江”, per se.

The panel decision in ADNDRC case HK-0800174 continues:

... [A] respondent may demonstrate its right and legitimate interest in the disputed domain name through proving that it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Deciding that the Complainant had in that case failed to satisfy paragraph 4(a)(ii) of the Policy, e.g., that the Respondent, Tiza Dustin Hill, had legitimate rights and interests in the domain name “长江”, the learned Panelist in ADNDRC case HK-0800174 dismissed the Complaint and decided the matter in favour of the Respondent, observing:

In the present case, the disputed domain name is being used for a website providing the information of Yangtze River. If any Internet user is attracted by the River name in the domain name to visit the website that is genuinely presenting information of the River, the domain name is apparently not misleading and will not cause either initial or subsequent confusion. Since there is no evident [sic] that the Respondent has any commercial gains through

the use of the domain name, the Respondent should have right [sic] or legitimate interest to make such noncommercial use legitimately.

But the facts presented in the present case are quite different. Unlike the facts in *Cheung Kong (Holdings) Limited v. Tiza Dustin Hill*, here the Respondent is not making a legitimate noncommercial or fair use of the domain name “长江”. To the contrary, here the Disputed Domain Name is linked to a webpage providing information search services having no connection whatsoever with China’s renowned Yangtze, or Changjiang River, other than its use of the same name. *Amazon.com, Inc. v. Paul Horner*, WIPO Case No. D2003-0071 (August 4, 2003).

In *Cheung Kong (Holdings) Limited v. Netego Dot Com*, ADNDRC Case Number HK-0800173 (3 February 2009), a majority of the three-member Panel held that the Respondent, Netego Dot Com, had no rights and legitimate interests in the domain name “長江.com”. In *Netego*, as in the present case, the evidence showed that the disputed domain name was hyperlinked to a webpage providing information search services having no connection with the Yangtze River. (The Respondent in *Netego* submitted a Response to the Complaint in which he acknowledged that he “did not feel any urgency” to additionally hyperlink the domain name to his operational website offering cruises on the Yangtze River. Had the Respondent, Netego, done so, it is conceivable that a legal right and interest in the Respondent’s use of the name “長江” could well have been established).

The Panel finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

According to the prevailing opinion of numerous UDRP panels, in some circumstances the so-called “passive holding” of a domain name can be treated as its being used in bad faith. The leading case in this regard is *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (18 February 2000). The Panelist in that case found that, in order to establish that the registrant was using a domain name in bad faith, it was not necessary to find that he had undertaken any positive action in relation to the domain name.

In *Telstra* it was expressly recognised that it is not possible to determine in the abstract what circumstances of passive holding, other than the several scenarios specifically illustrated as examples in paragraphs 4(b)(i-iii) of the Policy, can constitute bad faith use. The *Telstra* panel observed that, in considering whether the passive holding of a domain name following its bad faith registration satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must pay close attention to all the circumstances of the Respondent’s behavior.

Applying the *Telstra* test, this panel considers that a very telling aspect of this case was the Respondent’s additional registration on 19 April 2006 of the domain name “cheungkongholdings.cc”, the major portion of which is identical to Complainant’s trademarks “cheungkongholdings.com”, “cheungkongholdings.org”, and “cheungkongholdings.net”. Each of these trademarks was registered by the Complainant on 1 February 2000.

The Respondent's additional registration of the domain name "cheungkongholdings.cc" negates the possibility that the Respondent might have registered and used the Disputed Domain Name "長江" by mere innocent coincidence, but, rather, evidences a pattern of abusive domain name filings by the Respondent, which supports a finding of bad faith in this case. *See, Abercrombie & Fitch Stores, Inc. and A & F Trademarks, Inc. v. John Zuccarini d/b/a Cupcake Patrol*, WIPO Case Number D2000-1004 (November 1, 2000).

A Whois database search conducted on 30 July 2008 in connection with that domain name registration showed that the Registrant, the Respondent, Punhoi Yeu, had provided a different address from that provided when the Disputed Domain Name was registered, to wit: Dongsheng Town, Zhongshan, Gaungdong, CN 528400 and telephone number, +86 01058022136, but that the Respondent's full name, email address and facsimile number matched exactly.

In conclusion, the Panel finds that the Respondent registered and used the domain name in bad faith, with the intention to ride on the reputation of the Complainant and to create confusion that the Respondent's use of the Disputed Domain Name was authorised by the Complainant. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <長江.cc> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER
Sole Panelist

Dated: 20 March 2009